



Ethics and Anti-Corruption Commission v Saidimu & another (Environment & Land Case 6 of 2023) [2024] KEELC 4217 (KLR) (9 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4217 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE 6 OF 2023**

**AK BOR, J
MAY 9, 2024**

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

ANTHONY SAIDIMU 1ST DEFENDANT

SAMMY KOMEN MWAITA 2ND DEFENDANT

RULING

1. Through the application dated 11/12/2023, the Plaintiff sought an injunction to restrain the 1st Defendant from dealing by way of sale, transfer, mortgage development or any other manner with the land known as Nanyuki Municipality Block 6/330 (“the suit land”) pending hearing and determination of the suit and the application. The application was made on the ground that the suit land was reserved for public use and was the compound for government house no. Nany/Hou/HG/4 in Nanyuki Town, Laikipia County and that the land was to be held as public utility by the Commissioner of Lands on behalf of the people of Kenya since it was already alienated and set aside for government housing.
2. The 2nd Defendant is said to have caused the suit land to be offered for allocation through his officers as Uns. Resd. Plot No. A, Nanyuki Municipality which upon survey was registered as Nanyuki Municipality Block 6/330. The Plaintiff averred that the suit property was unlawfully alienated since under the repealed Government Lands Act neither the President nor the Commissioner of Lands had power to alienate or allocate alienated government land.
3. The application was supported by the affidavit of Simeon Lei who deponed to the investigations the Plaintiff carried out into the acquisition of suit land after receiving information that the compound of a government house had been unlawfully allocated to the 1st Defendant. The Plaintiff annexed the building register from Nanyuki in which the house is described as house number HG4 together with



- the Report of the Commission of Inquiry into the Illegal or Irregular allocation of public land which mentions house no. HG4 in Nanyuki. He also annexed the valuation report for the revised rent for government houses dated 1/11/2022.
4. The 1st Defendant filed grounds of opposition to the effect that the suit was statute-barred and offended the provisions of Section 7 of the Limitations of Actions Act. Further, that the suit was misconceived because the Ndung'u Report merely made recommendations and was not conclusive on the determination of ownership of the properties since such jurisdiction fell on the courts of law. The 1st Defendant added that the Ndung'u Report had been in the public domain for over two decades and that the suit was brought in bad faith. He claimed that no hearing was conducted which was a violation of rules of natural justice.
 5. The 1st Defendant swore the replying affidavit opposing the application for injunction. He denied that there were any investigations or documentation to support the claim of fraud and illegality made by the Plaintiff. He reiterated that the suit should have been filed years before and added that the Plaintiff failed to disclose that prior to this suit being filed, the suit land had been taken over by certain government officials without the authority of the court. Following that action, he wrote to the Ministry of Lands seeking protection. He averred that the Principal Secretary responded confirming his ownership rights over the land and that the Principal Secretary had no knowledge of the investigations said to be pending. It was only after his advocate wrote a demand letter to the occupant of the house that he regained possession. He maintained that this suit was part of the attempts by government officials to take over the property.
 6. Mr. Anthony Saidimu maintained that he was lawfully allocated the suit property in 1992 and that at the hearing of the suit he would demonstrate the steps taken in the allocation of the suit land. He stated that he had been in quiet possession of the suit land for over two decades and had been paying rates to the government until now. He attached copies of the letter dated 4/7/2023 from the County Director in charge of housing; demand letter dated 8/8/2023; letter dated 14/8/2023 from the Principal Secretary which the court notes is not signed as well as the certificate of lease together with the lease and evidence of payment of rates for the suit land.
 7. The court granted the Plaintiff leave to file a supplementary affidavit. Simeon Lei reiterated in the supplementary affidavit that the investigations conducted revealed that the suit land was public land situated within Nanyuki town comprising government house no. HG 4 together with its compound. He reiterated that the investigations established that the suit land was not available for allocation. He pointed out that the letter from the Principal Secretary was not signed. He added that it would be prejudicial to the outcome of the suit if the 1st Defendant were allowed to deal with the suit land in a manner that may affect the substratum of the case.
 8. The court directed parties to file submissions which it has considered. The Plaintiff submitted that the suit property constituted alienated government land belonging to the state Department of Housing on which government house number NANY/HOU/HG/4 is erected. It maintained that the issue in contention was whether the 2nd Defendant had power to alienate the suit land to the 1st Defendant and whether the procedure set out in the Government Lands Act at Sections 12 and 13 regarding the sale of government plots within towns was adhered to when the allocation took place.
 9. The Plaintiff pointed out that the last paragraph of the letter of allotment warned the 1st Defendant that the government was not guaranteeing that the property was available for allocation and that the government would not accept liability in the event of prior commitment. It urged that the 1st Defendant participated in the unlawful and irregular alienation of government land and relied on several decisions. It also cited Article 68 (c) (v) of *the Constitution* regarding the review of grants or



disposition of public land to establish their propriety. The Plaintiff maintained that it had established a prima facie case and relied on *Mrao Limited v First American Bank of Kenya Limited* (2003) eKLR and *Nguruman Limited v Jan Bonde Nielsen* (2014) eKLR.

10. On his part, the 1st Defendant submitted that the Plaintiff had not made out a case for the grant of a temporary injunction and relied on Order 40 (1) (a) and (b) of the Civil Procedure Rules. He also relied on *Giella v Cassman Brown & Company Limited* (1973) EA 358 on the principles for the grant of a temporary injunction. He maintained that the Plaintiff had made a serious allegation claiming he obtained the suit land illegally without tendering any evidence yet that was a serious allegation whose standard of proof was higher than that in ordinary civil cases. He maintained that the Plaintiff had failed to discharge the burden of prove against him. He added that the Commissioner for Lands was acting well within his power in allocating the suit property to him and that due process was followed in the land allocation.
11. The 1st Defendant contended that the Plaintiff had failed to demonstrate that the government was bound to suffer serious consequences if the injunction sought were not granted. He added that the Plaintiff had failed to establish a prima facie case to warrant the grant of an injunction while contending that he had been in continuous and interrupted occupation of the suit land and had not shown any intention to encumber or dispose of the suit property. He urged that he stood to suffer if the orders sought were granted. He added that it had not been shown that he was about to dispose of the suit property or devalue it and, as such there was no basis to grant an order of injunction.
12. The issue for determination is whether the court should grant a temporary injunction to restrain the 1st Defendant from dealing with the suit land. The subject matter of this dispute is a piece of land on which is erected a government house which the 1st Defendant claims to have acquired lawfully in property in 1992. On its part, the Plaintiff asserts that the suit land was already set apart for use as a government house and was therefore not available for allocation to the 1st Defendant. These are some of the issues that the trial court will have to determine.
13. To obviate a situation where the suit land may be alienated or otherwise dealt with in a manner that may alter the substratum of the dispute or bring in third parties to compound the dispute, it is necessary to restrain dealings with the suit land.
14. The 1st Defendant's claim that he was in occupation of the suit land was not controverted by the Plaintiff. The status quo existing as at 8/5/2024 in terms of occupation of the house on the suit land will be maintained until the suit is heard and determined.
15. The 1st Defendant is restrained by a temporary injunction from selling, transferring, mortgaging, developing or dealing with the land known as Nanyuki Municipality Block 6/330 until the suit is heard and determined.
16. Parties are directed to comply with Order 11 the Civil Procedure Rules within 30 days and to set down the suit for expeditious hearing and determination.

Costs of the application will be in the cause.

DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF MAY 2024.

K. BOR

JUDGE

In the presence of: -

Mr. Robert Mutembei for the 1st Defendant



No appearance for the Plaintiff and 2nd Defendant

